

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

B-184789

DATE: OCT 30 1975

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FILE: David Martin - Effective date of increased per diem rate authorized under Travel Expenses
MATTER OF: Amendment Act of 1975.

DIGEST: Travel order issued May 14, 1975, authorized per diem on lodgings-plus basis using \$12 allowance for meals, not to exceed \$25. Employee is entitled to higher per diem rate for travel performed on May 19 and 20, 1975, since the order is inconsistent with Temporary Regulation A-11 which implemented Travel Expenses Amendments Act of 1975, effective May 19, 1975, and requires agencies to compute per diem under the lodgings-plus system using a \$14 allowance for meals, not to exceed \$33.

This action involves a request for an advance decision from the Comptroller for the Department of Labor concerning the rate of per diem to which Mr. David Martin is entitled for temporary duty travel authorized before the enactment of the Travel Expense Amendments Act of 1975, Pub. L. No. 94-22, approved May 19, 1975, 89 Stat. 84, but performed by him on and after the date of enactment. That Act increased the maximum per diem allowance from \$25 to \$35.

The temporary duty travel performed by Mr. Martin on May 19 and 20, 1975, was authorized by a travel order dated May 14, 1975. The travel order specified a per diem rate "not to exceed the applicable departmental rate." We have been informally advised that at the time the travel order was issued and the travel was performed the applicable departmental rate would have entitled Mr. Martin to a per diem rate, not to exceed \$25, computed on the lodgings-plus basis using an allowance of \$12 per day for meals and miscellaneous expenses. However, Mr. Martin has claimed per diem at the rate of \$33, computed on the lodgings-plus basis using an allowance of \$14 per day for meals and miscellaneous expenses.

The Department of Labor questions the propriety of Mr. Martin's claim because his travel order was issued prior to the increase of the maximum allowable per diem rate authorized by Pub. L. No. 94-22. They state that they are not aware of any authority for retroactively increasing per diem rates specified in travel orders.

The issue presented by the Department of Labor was recently considered by our Office in B-184344, August 28, 1975. In that decision we held that under the regulations implementing Pub. L. No. 94-22 an employee who had been authorized per diem computed on

B-184789

the lodgings-plus basis prior to the increase in per diem rates would be entitled to a per diem rate in excess of the maximum specified in his travel orders for travel performed on and after the effective date of the regulations implementing that Act. Our decision was based on the fact that effective May 19, 1975, the General Services Administration implemented that Act by issuing Temporary Regulation A-11 (FPMR) which amended Federal Travel Regulations (FPMR 101-7) para. 1-7.3c (May 1973) to require agencies to establish the per diem rate for travel in the conterminous United States when lodging is required on the basis of the average amount the traveler pays for lodging plus an allowance of \$14 for meals and miscellaneous expenses, not to exceed \$33 per day. Since the authority to promulgate regulations under that Act is vested in the General Services Administration, travel orders issued by an agency for official travel are valid only to the extent that they are consistent with such regulations. Therefore, insofar as Temporary Regulation A-11 provides that an employee is entitled to a specific allowance or rate of reimbursement, without providing administrative discretion to an agency to alter such rates or allowances, an agency may not properly provide for a different rate or allowance by travel regulations or travel orders.

In view of the above, to the extent that Mr. Martin's travel order authorized a per diem rate on the lodgings-plus basis which is inconsistent with the requirements of Temporary Regulation A-11, it is not valid for travel performed on or after the effective date of that regulation, namely May 19, 1975. Accordingly, Mr. Martin is entitled to reimbursement for the temporary duty travel performed by him on May 19 and 20, 1975, at a per diem rate, not to exceed \$33, computed on the lodgings-plus basis using an allowance of \$14 for meals and miscellaneous expenses.

R.F. KELLER

Deputy Comptroller General
of the United States